



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC503]

Endangered Species; File No. 27106

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application and conservation plan for an incidental take permit; and request for comment.

SUMMARY: Notice is hereby given that the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful gill net fisheries operating in the inshore waters of North Carolina. The duration of the requested permit is 10 years. NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address (see

ADDRESSES) on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The application is available for download and review at

<https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental->

take-permits and at <http://www.regulations.gov>. The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments, identified by NOAA-NMFS-2022-0115, by Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov> and enter [NOAA-NMFS-2022-0115] in the Search box. Click on the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources at celeste.stout@noaa.gov, 301-427-8403; Wendy Piniak, NMFS, Office of Protected Resources at wendy.piniak@noaa.gov, 301-427-8402.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take

of listed species. NMFS governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles, and Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon.

Background

NMFS received a draft permit application from NCDMF on June 22, 2022. Based on our review of the draft application, we requested further information and clarification on their mitigation measures and take requests. On December 2, 2022, NCDMF submitted an adequate and complete application for the take of ESA-listed sea turtles and sturgeon. This take is the result of the gill net fisheries operating in the internal coastal waters of North Carolina (NC) and the deploying of anchored gill nets (*i.e.*, passive gill net sets deployed with an anchor or stake at one or both ends of the nets).

The number of requested takes are expressed as estimates across the fishery based on model predictions when appropriate for Atlantic sturgeon, green sea turtles, and Kemp's ridley sea turtles. When takes could not be modeled (shortnose sturgeon, and hawksbill, leatherback, and loggerhead sea turtles), requested takes represent counts of observed takes. Additionally, in some instances, with low sample sizes, the estimates from the model output were sufficiently low such that a single observed interaction could extrapolate to a higher number of takes in real-time using the proportion method, even if the final estimated take using the model would not.

For the development these take numbers, NCDMF defined Time Period (TP) categories as follows: TP 1 (2013-2019, before regulations due to Amendments 2 and 3

of the southern Flounder Fishery Management Plan [FMP]), TP 2 (2020-2029, the 10 years of regulations due to Amendments 2 and 3 of the Southern Flounder FMP which reduced fishing effort), and TP 3 (2029-2033, after the rebuilding period of the Southern Flounder stock and regulations due to Amendments 2 and 3 would likely be removed or altered). Portions of TP 2 and TP 3 represent the 10 years for this ITP application.

NCDMF is requesting incidental take as follows in rolling 2 year (ITP Year) intervals (*i.e.*, takes may not exceed permitted levels in any two consecutive years) for TP 2 (Table 1) and TP 3 (Table 2):

Table 1 - September 2023-August 2029 - Time Period 2 (TP 2)

Species	Mesh-size Category	Disposition	Predicted or Observed Takes	Requested 2-year rolling take TP2
Atlantic sturgeon	Large & Small	Live	Predicted	436
	Large & Small	Dead	Observed	6
Green sea turtle	Large & Small	Live	Predicted	542
	Large & Small	Dead	Predicted	170
Kemp's ridley sea turtle	Large	Live	Observed	10
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	4
Leatherback sea turtle	Large & Small	Live or Dead	Observed	4
Loggerhead sea turtle	Large & Small	Live or Dead	Observed	24

Table 2 - September 2029-August 2033 - Time Period 3 (TP 3)

Species	Mesh-size Category	Disposition	Predicted or Observed Takes	Requested 2-year rolling take TP3
Atlantic sturgeon	Large & Small	Live	Predicted	1,740
	Large & Small	Dead	Predicted	112
Green sea turtle	Large & Small	Live	Predicted	588
	Large & Small	Dead	Predicted	182
Kemp's ridley sea turtle	Large	Live	Predicted	114
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	4
Leatherback sea turtle	Large & Small	Live or Dead	Observed	4
Loggerhead sea turtle	Large & Small	Live or Dead	Observed	24

Conservation Plan

NCDMF's conservation plan describes measures to minimize, monitor, and mitigate the incidental take of ESA-listed sea turtles and sturgeon. The conservation plan includes gill net fisheries operating in estuarine waters and deploying anchored gill nets as regulated through fisheries rules adopted by the North Carolina Marine Fisheries Commission and proclamations issued by the NCDMF director. Regulations include mandatory net attendance, yardage limits, mesh size restrictions, a minimum distance between fishing operations, gear marking requirements, soak-time restrictions, net shot limits, net height tie-down requirements, closed areas, and monitoring and reporting requirements. The conservation plan includes an adaptive management and monitoring

program, fisheries reduction, outreach, and timely response to “hotspots” where sturgeon and/or sea turtle interactions are unusually high.

Additionally, NCDMF will commit funds of up to \$2,000 per year to purchase PIT tags, which equates to approximately 100 tags per year. This number exceeds the average number of live Atlantic Sturgeon observed during ITP years 2013 through 2021 and should ensure that sturgeon in condition fit for tagging are PIT tagged unless poor maritime conditions make tagging infeasible. As part of the Observer Program sampling protocol, fin clips are taken from live and dead sturgeon. These samples are stored until they can be submitted for genetic analysis and included in the sturgeon genetics repository currently housed at the Atlantic Coast Sturgeon Tissue Research Repository (ACSTRR) at the Leetown Science Center. The NCDMF will commit up to \$3,000 per year to fund genetic analysis; at approximately \$100 per sample, this funding provides for the analysis of approximately 30 fin clips per year. The NCDMF will consult with NMFS to ensure samples collected during the current ITP and future samples collected under the requested ITP are appropriately selected based on criteria such as sturgeon length, location, and season. Should fewer than 30 fin clips be collected for a given year, any funds not expended from this allocation could be used for analysis of historical samples provided by NCDMF.

Research is also a valuable tool to address data gaps and inform research needs. The assistance and cooperation of commercial fishery stakeholders in the research can greatly benefit these projects. The NCDMF will continue to support and assist research efforts and facilitate the establishment of relationships with the commercial fishing industry. The NCDMF will also help, to the extent possible, respond to cold-stun events that occur in NC with some regularity. During future events, NCDMF will help provide transportation of staff, supplies, and turtles using Observer Program staff, vehicles, and

vessels. NCDMF will communicate with the North Carolina Wildlife Resources Commission about this commitment to ensure they reach out for assistance when needed.

NCDMF's monitoring program is largely funded through state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.

NCDMF considered and rejected three other alternatives: (1) No-Action; (2) Full Gear Closure; and (3) Additional Gear Regulations.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500-1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment (EA) to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit. Once a draft of the EA is complete it will be made available for public review and comment. The final NEPA and permit determinations will not be made until after the end of that comment period.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental take of ESA-listed sea turtles and sturgeon. NMFS will publish a record of its final action in the **Federal Register**.

Dated: December 16, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

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